IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.250 OF 2003

1. Smt. Ashalata Phaldessai,
aged 47 years, Staff Nurse,
Institute of Psychiatry &
Human Behaviour(IPHB),
Panaji-Goa.

2. Smt. Olinda Arez,
ageed 57 years, Staff Nurse,
Institute of Psychiatry &
Human Behaviour(IPHB),
Panaji-Goa. ... Petitioners.

versus

1. The Director, Institute of
Psychiatry & Human Behaviour,
Government of Goa, having
Office at Bambolim-Goa.

2. State of Goa, through its
Chief Secretary, having
Office at Secretariat,
Panaji-Goa. ... Respondents.

Mr. M. S. Sonak, Advocate for the Petitioners.

Mr. P. A. Kamat, Additional Government Advocate for the Respondents.

CORAM: F. I. REBELLO &
P. V. HARDAS, JJ.

DATED: 9TH JULY, 2003.

ORAL JUDGMENT(PER F.I.REBELLO, J.)

Rule.

2. Respondents waive service. Heard forthwith.

The Petitioners are presently working as Staff Nurses with the Respondents. The Petitioners were earlier appointed on various dates as Auxillary/Nurses/Midwifes(ANMS). The Petitioners, however, were called upon to discharge the duties of Staff Nurses as at the relevant time no Staff Nurses were available. By Memorandum dated 11th August,1983, the Petitioners were offered temporary posts of Staff Nurses in the pay scale of Rs.425-640. Upon the Petitioners accepting the offer vide Order dated 22nd August, 1983, the Petitioners came to be temporarily appointed as Staff Nurses in the pay scale of Rs.425-640. On 7th November, 1987, the Seniority List of Staff Nurses was published. In that Seniority List, the name of Petitioner No.1 was shown at serial no.22 and Petitioner No.2 was shown at serial no.21. By Memorandum of 16th November, 1995, a tentative Seniority List of the five Staff Nurses who came to be appointed vide Order dated 22nd August, 1983 was circulated. There was no objection to the seniority. However, objections were filed for circulation of a separate Seniority List. The Petitioners were informed by Office Memorandum of 12th December, 1995, that such Seniority List was prepared and finalised as per the directives of the Government. The said Seniority List was finalised and published on 8th July, 1996.

3. A Memorandum dated 3rd August, 1998, was issued

wherein it was clarified that the recruitment of the Petitioners and three of the Staff Nurses was effected from 11th August, 1983 in relaxation of the prescribed educational qualifications with the approval of the Government. It was also set out therein that the five ANMs who were appointed as Staff Nurses would continue in the Institution and their seniority would be maintained separately as per the Government instructions. It was also set out therein that since the Petitioners had been appointed by relaxation for appointment of Staff Nurses, they would not be given the benefit of the Time Bound Promotional Scale(T.B.P.S.). It is the case of the Petitioners that the said Memorandum came to be issued as by then, the Petitioners had completed 12 years of service and were entitled to the benefit of T.B.P.S.

4. The Petitioners called on the Respondents to reconsider the decision as contained in Office Memorandum dated 3rd August, 1998. Ultimately, by Order dated 31st October, 2001, on recommendation of the Departmental Promotion Committee sanction was accorded to grant T.B.P.S. to the Petitioners w.e.f. 11th August, 1995 i.e. the date on which the Petitioners completed 12 years of service as Staff Nurses. The pay fixation Orders were issued by Orders dated 15th November, 2001 and 18th February, 2002. However, the actual benefits of

T.B.P.S. were not granted. The Petitioners were supposed to receive the Order dated 15th January, 2003, whereby the Respondent No.1 withdrew the Order dated 31st October, 2001, by which T.B.P.S was sanctioned to the Petitioners. It is this Order which is challenged on various grounds.

5. Mr. S. G. Korgaonkar, Under Secretary, Public Health Department, has filed an Affidavit dated 25th June, 2003. In paragraph 1 of the Affidavit, it is set out that considering the contention raised by the Petitioners the Government had decided to reconsider the decision by referring the matter to DPC and giving opportunity to the Petitioners.

6. The limited issue before this Court is whether after the qualifications were relaxed, is it open to the Respondents to deny to the Petitioners the T.B.P.S. Order dated 22nd December, 1989, has been issued by the Respondents. By Memorandum dated 3rd August, 1998, issued by the Respondents, it was set out that recruitment of five ANM Staff Nurses was done in relaxation of the prescribed qualifications. What is, therefore, apparent is that the Petitioners herein were appointed in relaxation of the educational qualifications. Once there is power to relax and the Respondents appointed the Petitioners, the Petitioners

are entitled to hold the said post as Staff Nurses. From the synopsis submitted on behalf of the Respondents, it was firstly contended that the Petitioners could not have been appointed as Staff Nurses as they do not have qualifications. Once the qualifications were released, the Petitioners were allowed to hold the posts for a long time and draw the pay scale.

7. The next question is whether it is open to the Respondents to deny to the Petitioners the Time Bound Promotional Scale on the ground that they do not have educational qualifications for the post of Staff Nurses. The Respondents have issued an Office Memorandum dated 5th July, 1989, whereby a Government employee if he had the requisite educational qualifications and had completed 12 years in the grade was entitled to the next higher pay scale if, such employee possessed educational qualifications prescribed for the next higher post. The Association of Government employees to which the Petitioners are also members represented against them to the Government. Considering that, the Government had taken a policy decision to grant to such employees who did not have the educational qualifications for the next higher posts pay scales in terms of O.M dated 22nd July, 1989. The Respondents so understood it when by Order dated 31st October, 2001, the Petitioners on the recommendation of the Department Promotion Committee

accorded sanction for the grant of T.B.P.S to the Petitioners in the pay scale of Rs.1640-6-2600-75-2900 w.e.f. 11th August, 1995. It is secondly contended that enquiry was done in the matter of granting the T.B.P.S. to the Petitioners. Enquiry would have been if at all the Petitioners were ineligible. The DPC which was constituted found the Petitioners eligible. Once the Petitioners were eligible, the question of Respondents carrying out any further exercise is uncalled for. In the Affidavit of Mr. S. G. Korgaonkar, Under Secretary, all that is set out is that the Government had decided to reconsider the decision by referring the matter to DPC. Once the DPC has done the exercise and there are no other reasons disclosed as to why the Petitioners are not entitled for T.B.P.S, we see no reasons as to why the exercise has to be considered once again. The matter was adjourned to enable the Respondents to show that there was some omission on the part of the earlier DPC and some aspects which are required to be considered had not been considered. There is no such material placed before this Court. In the light of that, we are of the opinion that the Petition must be allowed.

8. Rule made absolute in terms of prayer clauses (A) and (B). In the circumstances, there shall be no order as to costs.

The Respondents are directed to implement the time scale within twelve weeks from today.

F. I. REBELLO, J.

P. V. HARDAS, J.

RD.